**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| **In the Matter of** | ) | |
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| **Verizon Petition for Forbearance** | ) | **CC Docket No. 96-149** |
| **from the Prohibition of Sharing Operating,** | ) | |
| **Installation, and Maintenance Functions** | ) | |
| | ) | |

# WORLDCOM OPPOSITION

Pursuant to the Commission's August 9, 2002 Public Notice, WorldCom, Inc. (WorldCom) hereby submits its opposition to Verizon's request that the Commission forbear from applying the section 272(b)(1) prohibition on sharing of operations, installation and maintenance ("OI&M") functions.

## I. The Commission May Not Forbear from Applying the OI&M Prohibition

The Commission should deny Verizon's petition because, as the Commission has previously found, the Commission may not forbear from applying the provisions of section 272 to any interLATA services for which a Bell Operating Company must obtain authorization under section 271(d) of the Act.[1] Pursuant to section 10(d) of the Act, the Commission may not forbear from applying the requirements of section 271 "until it determines that those requirements have been fully implemented."[2] Because one of the "requirements" of Section 271 is that BOCs may obtain interLATA authorization only if

[1] Bell Operating Companies; Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, Memorandum Opinion and Order, 13 FCC

"the requested authorization will be carried out in accordance with the requirements of Section 272,"[3] the Commission has found that Section 10(d), read in conjunction with Section 271(d)(3), "precludes [the Commission's] forbearance for a designated period from section 272 requirements with regard to any service for which a BOC must obtain prior authorization pursuant to section 271(d)(3)."[4] For that reason, all previous orders in which the Commission has decided to forbear from applying section 272 have involved interLATA services for which authorization pursuant to section 271(d)(3) was not required, i.e., interLATA service offerings authorized by section 271(b)(3) or section 271(f).[5] Because Verizon, by contrast, is asking the Commission to forbear from applying a provision of Section 272 to all Verizon-offered interLATA services, including those for which Verizon must obtain authorization pursuant to section 271(d)(3), the Commission must deny Verizon's petition for forbearance as inconsistent with section 10(d) of the Act.

To the extent that Verizon is claiming that the ban on the sharing of OI&M services is not a requirement of section 272,[6] and that section 10(d) is therefore inapplicable, that claim is without merit. The Non-Accounting Safeguards Order makes perfectly clear that the prohibition on the sharing of OI&M functions is a requirement of section 272, compelled by a straightforward interpretation of section 272(b)(1)'s "operate

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Rcd 2627, 2641 ¶ 23 (1998) (E911 Forbearance Order)

[2] 47 U.S.C. § 160(d).

[3] 47 U.S.C. § 272(d)(3)(B).

[4] E911 Forbearance Order at ¶ 23. It is irrelevant that Verizon has already obtained interLATA authorization pursuant to section 271(d)(3) in several in-region states. Section 10(d) precludes the Commission from forbearing from section 271(d)(6) of the Act, which makes clear that the "conditions required for . . . approval" of interLATA authorizations, including the requirement that the BOC provide interLATA services in accordance with section 272, continue to apply after interLATA authority has been granted.

[5] See, e.g., E911 Forbearance Order; Petition of U S West Communications, Inc., for a Declaratory Ruling Regarding the Provision of National Directory Assistance; Petition of U S West Communications, Inc. for Forbearance; The Use of N11 Codes and Other Abbreviated Dialing Arrangements, Memorandum Opinion and Order, 14 FCC Rcd 16252 (1999) (NDA Forbearance Order).

independently" language.[7] Contrary to Verizon's suggestion, it is irrelevant that the OI&M prohibition "is not [specifically] mentioned anywhere in section 272 of the Act;"[8] as the Commission explained in the Non-Accounting Safeguards Order, the sharing of OI&M services "would create the opportunity for such substantial integration of operating functions as to preclude independent operation, in violation of section 272(b)(1)."[9]

Apparently conceding that its forbearance request is precluded by section 10(d), Verizon has also used its comments in the WC Docket No. 02-112 section 272 "sunset" proceeding to request that the Commission eliminate the OI&M prohibition.[10] Verizon contends, in particular, that the Commission should reevaluate the OI&M prohibition in light of evidence that Verizon claims to have gathered about the costs of complying with that prohibition.[11] But even if the cost information provided by Verizon were reliable, which it is not, it would be irrelevant. The Non-Accounting Safeguards Order makes clear that the OI&M prohibition is based not on a weighing of costs and benefits by the Commission, but is instead based on a straightforward reading of section 272(b)(1)'s "operate independently" language. If the BOC and its interLATA affiliate were to use the same personnel and systems for the operation, installation, and maintenance of circuits, switches and transmission equipment, the BOC and its affiliate could not reasonably be

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[6] See, e.g., Verizon Petition at 2 (claiming that the OI&M prohibition is "[a] creation of regulation and not the Act.")

[7] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, released December 24, 1996, at ¶¶ 158, 163 ("[W]e read section 272(b)(1) to bar a section 272 affiliate from contracting with a BOC or another entity affiliated with the BOC to obtain operating, installation and maintenance functions associated with the section 272 affiliate's facilities.")

[8] Verizon Petition at 2.

[9] Non-Accounting Safeguards Order at ¶ 163.

[10] Verizon Comments, WC Docket No. 02-112, August 5, 2002, at 15-21.

[11] Id. at 16.

found to "operate independently," as required by the statute.[12] Because the OI&M prohibition is compelled by section 272(b)(1)'s "operate independently" language, the Commission must reject Verizon's requests to eliminate that prohibition.

In both this proceeding and in WC Docket No. 02-112, Verizon has suggested that the OI&M sharing prohibition should be eliminated because, Verizon claims, it is inconsistent with the Commission's decision to permit the sharing of administrative services.[13] If anything, Verizon has it backwards; WorldCom continues to believe that the Commission's decision to permit the sharing of administrative, marketing, and sales functions is inconsistent with section 272(b)(1). Nonetheless, having made the decision to permit the sharing of administrative functions, it is entirely reasonable for the Commission to distinguish between OI&M functions and administrative functions in its interpretation of section 272(b)(1). In contrast to regulatory, human resources and other "administrative" functions, network operation, installation, and maintenance are core functions of the BOC and its affiliate's operations. In fact, Verizon's predecessor RBOCs, Bell Atlantic and NYNEX, both distinguished between administrative functions and OI&M functions in their 1996 comments in CC Docket No. 96-149.[14]

## II. Even if the Commission Had the Authority to Forbear, Verizon Has Not Made the Showing Required by Section 10 of the Act

[12] Non-Accounting Safeguards Order at ¶ 158.
[13] See, e.g.,Verizon Petition at 4.
[14] NYNEX Comments at 27, CC Docket No. 96-149, August 15, 1996 ("First, Section 272(b)(1) clearly requires the separate affiliate to operate independently of the BOC. It does not, however, require it to conduct its business without the governance and administrative support from its ultimate parent. Second, sharing of operating personnel and administrative services present significantly different potential risks of harm to ratepayers and competitors."); Bell Atlantic Reply Comments at 3, CC Docket No. 96-149, August 30, 1996.

Pursuant to Section 10(a) of the Act, the Commission may not grant a petition for forbearance unless the petitioner demonstrates that (1) enforcement of the provision in question is not necessary to ensure that rates are just, reasonable, and not unreasonably discriminatory; (2) enforcement of the provision in question is not necessary to protect consumers; and (3) forbearance is in the public interest.[15] Even if the grant of Verizon's petition were not precluded by section 10(d), the Commission would have to deny Verizon's petition because Verizon has not made the showing required by section 10(a).

## A. The OI&M Prohibition Remains Necessary to Ensure that Verizon's Rates and Practices are Just, Reasonable, and Not Unreasonably Discriminatory

Verizon contends that the OI&M prohibition is no longer necessary to ensure that rates are just and reasonable and not unreasonably discriminatory. But all of the arguments advanced by Verizon in its petition for forbearance have already been rejected by the Commission in the Non-Accounting Safeguards Order and, only three years ago, in the Third Order on Reconsideration.[16] Verizon is unable to point to any changed circumstances that would cause the Commission to reach a different conclusion today.[17]

First, the Commission has already rejected Verizon's argument that the ban on OI&M sharing is not necessary to prevent cost misallocation (and the resulting unjust and unreasonable rates). In the Non-Accounting Safeguards Order, the Commission found that

[15] 47 U.S.C. §160(a).
[16] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, Third Order on Reconsideration, CC Docket No. 96-149, released October 1, 1999, at ¶ 20 (Third Order on Reconsideration).
[17] See Third Order on Reconsideration at ¶ 20 (". . . BellSouth offers no new rationale for us to reconsider this prior determination.")

allowing the same individuals to perform OI&M services for both the BOC and its affiliate would create substantial opportunities for improper cost allocation.[18]

Similarly, there is no basis for the Commission to reconsider the Non-Accounting Safeguards Order's finding that the OI&M prohibition is necessary to prevent the BOC from discriminating against unaffiliated long distance carriers. Verizon points to the fact that the Commission has begun proceedings to consider performance standards for special access services and UNEs,[19] but the Commission has not yet adopted such performance standards. Moreover, performance measurements and standards, although essential, cannot by themselves provide a substitute for the requirement that the BOC and its affiliate "operate independently." First, as the Commission found, integrated operations of the type envisioned by Verizon "would inevitably afford the affiliate access to the BOC's facilities that is superior to that granted to the affiliate's competitors."[20] In contrast to Verizon's competitors, Verizon could provision a long distance circuit for a customer without the need to coordinate or negotiate access circuit orders or repair requests with the Verizon BOCs' access provisioning organization. Second, because the access circuit installation and repair procedures that Verizon would use for the Verizon section 272 affiliate would differ from those that Verizon would use for unaffiliated carriers, it would be difficult to perform reliable comparative performance measurements.[21] Notably, the Non-Accounting Safeguards Order found that both the OI&M prohibition and performance reporting were necessary to guard against discriminatory behavior by the BOCs.[22]

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[18] Non-Accounting Safeguards Order at ¶ 163.
[19] Verizon Petition at 9.
[20] Non-Accounting Safeguards Order at ¶ 163.
[21] Non-Accounting Safeguards Order at ¶ 160.
[22] Non-Accounting Safeguards Order at ¶¶ 163, 242-244.

## B. The OI&M Prohibition is Necessary for the Protection of Consumers

Given that the OI&M prohibition is still necessary to ensure that Verizon's access services are provided on a just, reasonable, and nondiscriminatory basis, it is clear that continued enforcement of the OI&M prohibition is necessary for the protection of consumers. Absent the OI&M restriction, consumers would be harmed by Verizon's ability to discriminate against its rivals in the long distance market and by higher local and exchange access rates resulting from cost misallocations.

Verizon is simply wrong when it contends that elimination of the OI&M prohibition would actually help consumers by "eliminating unnecessary costs [imposed] on Verizon."[23] As an initial matter, Verizon's estimates of the costs imposed by the OI&M restriction are unsupported and unverified. More importantly, even assuming arguendo that Verizon's estimate of $45 million[24] in potential annual cost savings is reasonable, that estimate pales in comparison to the consumer benefits accruing from the OI&M prohibition. First, the OI&M prohibition benefits consumers by limiting Verizon's ability to misallocate hundreds of millions of dollars in long distance-related OI&M costs to local and exchange access rates.[25] Second, the OI&M restriction benefits consumers by preventing Verizon from discriminating against its competitors in the long distance market, where there is over $100 billion in revenue at stake.[26]

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[23] Verizon Petition at 10.
[24] Verizon Petition, Howard Declaration at ¶ 5 ($183 million in potential savings over a four-year period, from 2003 to 2006).
[25] Verizon does not specify its affiliate's OI&M costs, but the Howard Declaration (at ¶ 4) claims that Verizon has incurred hundreds of millions in expenses in order to meet section 272 requirements.
[26] Industry Analysis Division, "Statistics of the Long Distance Telecommunications Industry," January, 2001, at 3.

## C. The OI&M Prohibition Remains in the Public Interest

Verizon contends that forbearance would be in the public interest because customers would benefit from Verizon's ability to provide services on an integrated basis. But Congress, in enacting section 272(b)(1), has already determined that whatever benefit might result from permitting the BOCs to provide services on an integrated basis is outweighed by the risks that such integration poses to competition in the long distance market.

Verizon's claim that elimination of the OI&M prohibition would intensify competition in the long distance market is without merit. First, contrary to Verizon's claim, Verizon is not placed at a cost disadvantage by the OI&M prohibition. Every other long distance carrier must, like Verizon's long distance affiliate, independently operate, install, and maintain its own network. Moreover, Verizon actually enjoys significant cost advantages that are not available to other carriers. For example, the group president of Verizon's long distance operations has reported that the sharing of sales and marketing functions with the Verizon BOCs, which is permitted by the Non-Accounting Safeguards Order, provides Verizon with "customer acquisition costs [that] are 20% to 30% lower than [other] long distance companies'."[27]

Similarly, Verizon is wrong when it claims that the OI&M prohibition puts Verizoin at a significant disadvantage when competing for large business accounts with carriers that, Verizon claims, are able to offer an integrated service platform using their own local and long distance facilities.[28] Contrary to Verizon's assertion that "competitive local exchange

[27] http://www.usatoday.com/life/cyber/invest/ina297.htm
[28] Verizon Petition at 7.

carriers use their own fiber-based last-mile facilities to serve the vast majority of their large business customers,"[29] Verizon's competitors still rely heavily on Verizon's access facilities even when serving large business customers.[30] Consequently, WorldCom and other long distance companies must, like Verizon's section 272 affiliate, coordinate their installation, repair, and maintenance activities with the Verizon BOCs, even when serving larger enterprise customers. Whatever difficulties Verizon's section 272 affiliate may experience in coordinating those activities with the Verizon BOCs are also faced by WorldCom and every other interLATA carrier.

[29] Verizon Petition at 7.

[30] The record in the Triennial Review proceeding shows that CLECs have built their own fiber to no more than about 30,000 buildings nationwide. Moreover, because larger business customers are typically multilocation customers, non-RBOC IXCs typically need to use BOC access services even when the IXC's local fiber may reach some of the customer's sites. For example, even when an IXC may have fiber to a customer's head office, it generally must use the BOC's access services to serve branch offices and other satellite locations.

## III. Conclusion

For the reasons stated herein, the Commission should deny Verizon's petition for forbearance.

Respectfully submitted,
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